BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

To: The Commission

REPLY COMMENTS

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Dated: February 3, 2003

Summary

These Reply Comments of Univision Communications Inc. ("Univision") focus solely on two issues: the continuation of the UHF discount in calculating compliance with the national television ownership rule, and the proposals by several commenters to require networks to purchase a fixed percentage of their programming from independent producers. As a broadcaster, Univision strongly supports retention of the UHF discount in applying any Commission ownership restriction premised upon audience reach. As a producer and distributor of Spanish-language programming, Univision strongly objects to any effort to restrict its discretion in programming to meet the needs of its minority audience.

Only two years ago, the Commission made the decision to retain the UHF discount after receiving numerous comments from the public. There has been no change in circumstances since that time justifying a different result today. A UHF station's signal still covers only one-third of the area reached by a VHF station's signal. Any suggestion that cable and satellite carriage of UHF stations has obviated the need for the UHF discount is misplaced. The very viewers that many UHF stations, including those owned by Univision, are attempting to target are among those least likely to subscribe to cable or satellite services. Moreover, the ability of UHF stations to obtain cable and satellite carriage under the Commission's rules depends directly upon their ability to deliver an adequate quality signal to local system headends – thus bringing back into issue the limited coverage of UHF broadcast signals. As a result, the UHF discount continues to be an entirely appropriate recognition of the limited coverage achievable by UHF stations in comparison to VHF stations.

As for proposals by some commenters that networks be required to purchase a fixed percentage of their programming from independent producers, such suggestions are both

procedurally and substantively flawed to an extreme degree. The proposals – thinly-veiled attempts to reinstate and broaden the Financial Interest and Syndication Rule – are beyond the scope of this rule making and should not be considered. Even if this were not the case, however, there is no public interest justification for such an intrusion into programmers' and licensees' discretion.

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REPLY COMMENTS OF UNIVISION COMMUNICATIONS INC.

Univision Communications Inc. ("Univision"), by its counsel, hereby submits its Reply Comments in the above-captioned proceeding in which the Commission is considering revision of its multiple ownership rules.[1] Univision indirectly owns and operates 30 full-power television stations, as well as the Univision and Telefutura broadcast networks, and therefore will be particularly affected by any changes in the multiple ownership rules that may be adopted in this proceeding. However, Univision is confining its Reply Comments to two particular matters raised in comments filed with the Commission in this proceeding – the continued need to apply the UHF discount in calculating national audience reach under the Commission's ownership

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[1] Notice of Proposed Rule Making, FCC 02-249, released September 23, 2002 (hereinafter "NPRM").

rules, and the unfounded suggestion by several commenters that the Commission require program networks to acquire a fixed percentage of their programming from independent production sources.

I. THE COMMISSION SHOULD RETAIN THE UHF DISCOUNT

If, at the conclusion of this proceeding, the Commission chooses to retain the national television ownership rule in either its current or a modified form, Univision strongly urges the Commission to also retain the UHF discount in calculating a station's audience reach under that rule. The UHF discount continues to accurately reflect the limited audience reach of UHF facilities, and the disparity in coverage between UHF and VHF stations. This being the case, the UHF discount continues to serve the public interest and should be retained in its current form.

Univision notes that despite the NPRM's request for comments on the continued need for the UHF discount, only two commenters – Children Now and the United Church of Christ – suggest that the UHF discount should be eliminated, and Children Now's discussion of the UHF discount consists of less than one sentence.[2] However, because the UHF discount is so tremendously important in encouraging investment in UHF facilities and in promoting the creation of new nationwide program networks, Univision wishes to herein make clear that the reasons that motivated the Commission to adopt the UHF discount in 1985 remain just as compelling, if not more so, today.

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2 Comments of Children Now, American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Psychological Association, Action Coalition for Media Education, Center for Media Education, Mediascope, National Association of Child Advocates, and National PTA ("Children Now") at 3 (stating that the Commission should "eliminate the UHF discount, which overcompensates UHF station owners.").

A. The Factual Basis for the UHF Discount Remains Unchanged

The first constant justifying retention of the UHF discount is that "[d]ue to the physical nature of the UHF and VHF bands, delivery of television signals is inherently more difficult at UHF," and, therefore, "actual equality between these two services cannot be expected because the laws of physics dictate that UHF signal strength will decrease more rapidly with distance than does VHF signal strength."[3]

The empirical evidence demonstrating the UHF/VHF disparity has never been refuted. The Commission has noted that VHF stations "typically have a signal reach of 72-76 miles, while UHF stations' signal reach is only 44 miles."[4] This means that a **VHF** station's coverage area can reach up to **18,146** square miles, while a **UHF** station's signal can reach only **6,082** square miles, or approximately **one-third** of a VHF station's service area. However, even this stark comparison understates the full extent of the disparity, as viewers within a UHF station's predicted signal contour will still have a more difficult time receiving the UHF signal than they would a VHF signal because of UHF's greater susceptibility to ground obstructions and multipath interference.[5] As a result, the UHF discount continues to be a realistic assessment of the disparity in UHF and VHF signal reach.

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3 Amendment of Section 73.3555, 100 FCC Rcd 74 (1985) at ¶ 43 (citing Comparability for UHF Television: Final Report (Sept. 1980) at 2).

4 Id. at ¶ 32; Broadcast Television National Ownership Rules; Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, 11 FCC Rcd 19949 (1996) at ¶ 9.

5 Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Services, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996) at ¶ 19.

Adding to the disparity, the Commission itself has acknowledged that "UHF broadcasters must transmit at much higher and more costly power levels in order to be adequately received" and therefore "UHF broadcasters [are] disadvantaged by greater operating expenses."[6] In its last substantive consideration of the UHF discount, just over two years ago, the Commission stated that "because of the higher operating costs of UHF stations, particularly due to their higher power requirements, even when they can reach these viewers they still incur greater expenses than VHF stations in doing so and, thus, remain under a competitive handicap warranting a 50 percent discount."[7] This fact remains unchanged, and the rising cost of electricity has actually *increased* the disparity since that time.

Recognizing the total impact of these various disparities, the Commission acknowledged in 1996 that "as a general matter, it appears that UHF stations are less profitable than VHF stations."[8] The Commission also noted that affiliation switches "indicate that broadcast networks favor VHF affiliates over UHF affiliates."[9] In retaining the discount in 2000, the Commission reasoned that "if there was no competitive disparity between VHF and UHF television, we would expect group owners to take advantage of the UHF discount by selling their VHFs and buying UHFs," and concluded that "[t]he fact that few, if any, group owners have

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6 Improvements to UHF Television Reception, 90 F.C.C. 2d 1121 (1982) at n.14.

7 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 15 FCC Rcd 11058 (2000) at ¶ 35.

8 Broadcast Television National Ownership Rules; Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, 11 FCC Rcd 19949 (1996) at ¶ 13.

9 Id.

used this strategy suggests that the market recognizes a continuing disparity between the two services."[10] This assessment is just as accurate today as it was in 2000, and retention of the UHF discount is clearly in the public interest.

B. Cable and Satellite Must-Carry Requirements Have Not Eliminated the Disparity in UHF and VHF Service

In the comments of the United Church of Christ, the only comments filed in this proceeding presenting any substantive argument for elimination of the UHF discount, the principle reason given is the existence of cable and satellite carriage as an "equalizer" that permits UHF broadcasters to reach viewers beyond their limited over-the-air coverage area. The United Church of Chirst comments suggest that the existence of cable and satellite must-carry rules ensures that UHF stations can reach the same number of local viewers as VHF stations. This assertion is mistaken in two regards. First, it ignores the substantial number of viewers that continue to receive their programming over-the-air, including those households where only some of the television sets are connected to cable/satellite service; and second, the cable must-carry rules explicitly provide VHF stations with broader carriage rights than UHF stations, thereby perpetuating rather than eliminating the UHF/VHF disparity.

1. The Basis for the Commission's Creation of the UHF Discount Continues to Exist

As an initial point, to the extent that the national television ownership rule is designed to ensure that a diversity of viewpoints is available for over-the-air viewers (who do not have access to the plethora of program sources available on cable and satellite), cable and satellite

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10 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 15 FCC Rcd 11058 (2000) at ¶ 36.

carriage of UHF stations is irrelevant.[11] The UHF discount is designed to account for the inherent limitations that UHF broadcasters face, both technically and from increased operating costs, in reaching over-the-air viewers, and those disadvantages continue to exist regardless of cable and satellite carriage.

However, the comments of the United Church of Christ appear to be suggesting that the number of viewers relying on over-the-air reception of television programming is sufficiently small that they can be effectively ignored in applying the national television ownership rule. Such an approach overlooks the very purpose of the rule, and, more importantly, ignores the immense number of viewers who still rely exclusively or partially on over-the-air reception.

This is a particularly big issue for minority-oriented broadcasters like Univision, who are not only forced to utilize predominantly UHF stations, but whose audiences disproportionately rely on over-the-air reception for their television programming. For example, according to Nielsen, in the top thirty Hispanic television markets in the U.S., only 52.8% of Hispanic television households subscribe to cable, leaving the remaining 47.2% relying exclusively on over-the-air reception of their local stations (unless they subscribe to satellite *and* their satellite provider carries all local stations in their market *and* they pay extra to receive those stations *and* they install the second dish that is needed if they are an EchoStar subscriber).[12] In some markets, cable penetration among Hispanic households is far lower, with the Dallas market having Hispanic cable penetration of only **35.9%**, and the Salt Lake City market having Hispanic cable

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11 NPRM at ¶ 130 ("The UHF discount is intended to recognize the deficiencies in over-the-air UHF reception in comparison to VHF reception.").

12 Nielsen Hispanic Station Index May 2002 Hispanic Cable Estimates.

penetration of only **22.9%**.[13] In markets such as these, over-the-air reception remains the dominant method of television viewing.

Moreover, even in those households that do subscribe to cable or satellite, it is common that only some of the television sets are connected to these services, with the remainder relying exclusively on over-the-air reception. The Commission itself has indicated that "81 million television sets, or approximately 30.3% of the 267 million sets in the U.S." are not connected to any cable or satellite service and receive all programming exclusively over-the-air.[14] As a result, UHF broadcasters continue to be at a disadvantage in these homes as well, even if they actually are carried by the local cable or satellite system.

In short, in the unusual instance where a UHF station is carried by all local cable and satellite systems in its market, it continues to be at a competitive disadvantage in households relying exclusively on over-the-air reception, as well as in the many cable/satellite-served households that still rely partially on over-the-air reception. As a result, any suggestion that cable and satellite carriage can equalize the UHF/VHF disparity is contrary to the facts.[15]

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13 Id.

14 Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighth Annual Report, 17 FCC Rcd 1244 (2002) at ¶ 79. In that same report, the Commission cites another study estimating that 29.2% of all households (20.7 million) are broadcast-only households. Id.

15 *See* NPRM at ¶ 131. Only the United Church of Christ argued that cable and satellite carriage of UHF signals supports repeal of the UHF discount. *See* Comments of Office of Communication, Inc. of the United Church of Christ, Black Citizens for a Fair Media, Civil Rights Forum, Philadelphia Lesbian and Gay Task Force, and Women's Institute for Freedom of the Press ("UCC Comments") at 56-58. However, even these comments are internally inconsistent, describing cable service as "virtually ubiquitous" in that section of the comments arguing for repeal of the UHF discount, while in another section stating that "only about 64% of households subscribe to cable. The ever-increasing monthly subscription costs prevent cable

Moreover, as is discussed below, in the real world, UHF stations rarely receive carriage equivalent to their VHF brethren,[16] and the explicit language of the Commission's must-carry rules ensure the continuation of that situation.

2. The Commission's Must-Carry Rules Perpetuate, Rather Than Eliminate, the UHF/VHF Disparity

As the Commission has noted, specialty stations like those of Univision, which tend to be UHF stations, "have not been widely carried by cable operators absent must-carry obligations."[17] However, one of the requirements for qualifying for must-carriage is a station's ability to place a specified over-the-air signal strength over the local cable or satellite system headend.[18] As a

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from being as widely adopted or relied upon as the broadcast media." Id. at 27, 59. Similarly, the comments assert that satellite carriage increases UHF coverage, while stating that "because DBS subscribers must pay monthly subscription fees and purchase or lease a receiving dish, DBS is not as accessible to consumers as broadcast." Id. at 32, 57. These comments clearly support Univision's contention that cable and satellite carriage are not viable alternatives for many consumers, and that over-the-air reception remains vital to many viewers. *See* id. at 27, 32.

16 With regard to satellite carriage, local-into-local service is only offered in select markets, and even in those markets where local stations are offered, reception of all local stations is not always possible and may require installation of a second dish. As the Media Bureau has acknowledged, EchoStar's satellite system carries Spanish-language stations, certain noncommercial stations, and independent commercial stations – stations that tend to be almost exclusively UHF stations – predominantly on its much less desirable, and harder to receive, secondary satellites, which require subscribers to install a second dish if they wish to view these stations. National Association of Broadcasters and Association of Local Television Stations; Request for Modification of Broadcast Carriage Rules for Satellite Carriers, 17 FCC Rcd 6065 (MB 2002) at ¶ 7.

17 Comcast Cablevision of Danbury, Inc., DA 03-94 (rel. Jan. 15, 2003) at ¶ 8.

18 *See* 47 C.F.R. § 76.55(c)(3) (television stations entitled to cable carriage do not include a "television broadcast station that does not deliver to the principal headend . . . a signal level of -45dBm for UHF signals or -49dBm for VHF signals . . . if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a

result, just as the technical limitations of UHF operation prevent UHF stations from achieving the broad geographic coverage of VHF stations with regard to viewers, they similarly prevent UHF stations from achieving the broad coverage of cable and satellite headends that is necessary to qualify for must-carry status on those systems. The argument that cable and satellite carriage rights have overcome the UHF disadvantage is therefore both fallacious and circular, as a UHF station generally qualifies for must-carry status only in areas that its UHF signal can reach,[19] which, by definition, is far smaller than the area in which VHF stations can qualify for must-carry status.[20] As a result, the must-carry rules do not alleviate the UHF/VHF disparity, as the UCC Comments claim,[21] but instead actually reinforce it.

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baseband video signal."); 47 C.F.R. § 76.66(g) ("A television station asserting its right to carriage shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility" and "to be considered a good quality signal for satellite carriage purposes, a television station shall deliver to the local receive facility of a satellite carrier either a signal level of -45dBm for UHF signals or -49dBm for VHF signals....").

[19] While television stations are permitted to use an alternate delivery method, such as installation of a fiber connection to the cable headend, these alternatives are costly, and therefore also competitively disadvantage UHF stations in comparison to their VHF counterparts. In addition, even where a broadcaster agrees to provide an alternate delivery method, cable systems frequently attempt to avoid carriage of stations by seeking market modifications from the Commission on the grounds that the station fails to place a Grade B signal over the cable communities at issue, thereby once again bringing into play the limited over-the-air coverage area of UHF stations. *See, e.g.*, Cablevision of Cleveland, L.P. and V Cable, Inc., 16 FCC Rcd 15575 (2001); Armstrong Utilities, Inc., 16 FCC Rcd 18118 (2001).

[20] In addition, because VHF stations are more likely to be affiliated with one of the four major English-language networks – ABC, CBS, Fox, and NBC – cable system operators have a greater incentive to work with a VHF broadcaster to obtain a viewable signal at their headends, whereas cable system operators often seek to avoid carriage of UHF stations even where a quality signal exists. *See, e.g.*, TCT of Michigan v. Charter Communications, 17 FCC Rcd 20461 (MB 2002); Marks Cablevision and TCI Cablevision of California, 12 FCC Rcd 22989 (CS 1997).

[21] UCC Comments at 57 n.277.

In addition, the advent of DTV has actually increased the disparity in cable carriage. While it has been suggested that the transition to DTV may eventually reduce the need for the UHF discount, the DTV transition has so far had the opposite effect. Due to the acknowledged superiority of VHF channels for NTSC broadcasting, most of the VHF spectrum had already been claimed when the time came to allocate DTV channels. As a result, the Commission's effort to provide a paired DTV channel for each television station in the country while also minimizing the use of spectrum above Channel 51 led to heavy crowding of the UHF band by the Commission's predominantly UHF DTV allocations. Many UHF stations are now encountering significant predicted, as well as unpredicted, interference to their operations as these new DTV stations commence operation. This interference has in turn harmed the ability of UHF stations to reach even their existing viewers, while also harming their ability to provide an adequate quality signal to cable and satellite headends to qualify for carriage.

Univision has firsthand experience with the impact of these UHF DTV allotments. When station KBWB commenced its DTV operations in 2000, Univision UHF station KUVS(TV), Modesto, California, suddenly began receiving angry letters and telephone calls from viewers complaining that they could no longer receive KUVS(TV)'s signal, as well as letters from several cable operators notifying KUVS(TV) that they were no longer receiving an adequate quality signal from the station, and in some cases, advising the station that it would be dropped from the cable operator's channel lineup if the problem was not rectified immediately. In fact, KUVS(TV) was indeed dropped by one of the major cable systems in the area due to the DTV interference, and remains off of that system to this day because of its inability to deliver an adequate over-the-air signal.

Thus, the DTV transition, far from alleviating the UHF/VHF disparity, has actually increased it because of the disparate impact it is having on the ability of UHF stations to reach their audiences and cable/satellite headends in their markets. Even once the DTV transition is complete, because the Commission's principal goal in crafting the DTV allotment table was to replicate stations' existing NTSC coverage areas,[22] that replication ensures that most existing UHF broadcasters will continue to have more limited signal coverage than their VHF counterparts.

As a result, it is clear that the UHF discount currently serves, and will continue to serve, the purpose for which the Commission crafted it. In the Commission's 2000 consideration of the UHF discount, the Commission stated that the UHF discount continued to be in the public interest, and that it would revisit that conclusion at a later date "near the completion of the transition to digital television."[23] As the UHF discount continues to serve its purpose, and it is premature to contemplate the UHF discount's continued applicability in a post-NTSC world, Univision urges the Commission to retain the UHF discount. Only two years ago the

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22 *See* Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, Order on Reconsideration of the Third Report and Order, 16 FCC Rcd 21633 (2001) at ¶ 17 ("One of the Commission's goals in designing the initial DTV Table of Allotments was to design DTV service areas that would, to the greatest extent possible, allow each broadcaster to provide DTV service to a geographic area that is comparable to its existing NTSC service area.").

23 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 15 FCC Rcd 11058 (2000) at ¶ 38; NPRM at ¶ 130.

Commission fully considered the UHF discount and decided to retain it in the form it has maintained since 1985.[24] In those two years, nothing has changed to justify repealing it today.

II. THE INDEPENDENT PRODUCER RULES PROPOSED BY SEVERAL COMMENTERS ARE NOT WITHIN THE SCOPE OF THIS RULE MAKING AND, IN ANY EVENT, LACK ANY LEGAL OR FACTUAL JUSTIFICATION

Several commenters in this proceeding have proposed that the Commission adopt rules requiring both broadcast and cable television networks to purchase a certain percentage of their programming from independent producers (an "Independent Producer Rule").[25] As the operator of two broadcast and one cable Spanish-language networks, Univision is extremely concerned with the numerous harms such a rule would generate, as well as the lack of any basis for the creation of such a rule in the first place. However, as these proposals are beyond the scope of this proceeding anyway, the Commission need not consider them.

A. The Proposed Independent Producer Rules Are Not Within the Scope of This Rule Making

The NPRM was intended to "initiate[] a comprehensive review of the Commission's media ownership rules."[26] More specifically, the NPRM established the scope of review to include review of: (1) the national television multiple ownership rule; (2) the local television

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24 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 15 FCC Rcd 11058 (2000) at ¶ 35.

25 *See* Comments of Center for the Creative Community ("CCC Comments"), Comments of Coalition for Program Diversity ("CPD Comments"), and Comments of Writers Guild of America, West, Producers Guild of America, Shukovsky English Productions, John Wells Productions, Bungalow 78 Entertainment, Oh Shoot Productions, Gideon Productions, and UBU Productions ("Writers Guild Comments").

26 NPRM at ¶ 1.

multiple ownership rule; (3) the radio-television cross-ownership rule; (4) the dual network rule; (5) the local radio ownership rule; and (6) the newspaper/broadcast cross-ownership rule.[27] Proposals for requiring networks to purchase a certain percentage of their programming from independent producers are not remotely related to any of these six rules. Therefore, consideration of any sort of Independent Producer Rule in this proceeding would violate the most fundamental precepts of the Administrative Procedure Act.[28] Proposals for an Independent Producer Rule are effectively an effort to reinstate and broaden the Commission's Financial Interest and Syndication Rules (the "Fin/Syn Rules"). However, as the Commission is aware, the last vestiges of the Fin/Syn Rules were repealed in 1995 after a lengthy rule making and several appellate decisions.[29] Any attempt to resuscitate those rules would necessarily require another rule making proceeding and a much better basis than has been presented by the commenters in this proceeding.

B. Any Form of Independent Producer Rule Would Be Without Basis and Harmful to the Public Interest

Commenters supporting some version of an Independent Producer Rule have failed to identify, much less demonstrate, any harm which such a rule would remedy. Some assert that certain networks have a financial interest in a greater number of programs in 2002 than they did in the early 1990s.[30] Even if true, that is hardly a surprising result, since the Fin/Syn Rules

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27 Id. at ¶¶ 6-7.

28 5 U.S.C. § 553.

29 *See* Syndication and Financial Interest Rules, Report and Order, 10 FCC Rcd 12165 (1995).

30 *See* CPD Comments at 4; Writers Guild Comments at 7-8.

artificially depressed network investment in programming until they were eliminated. More importantly, such an increase in network investment in programming should generally be seen as beneficial to the public, and the commenters proposing an Independent Producer Rule have certainly not demonstrated any harm from such investment that requires Commission intervention. For example, one commenter contends that without an Independent Producer Rule, it is prevented from doing its "best work."[31] However, the suggestion that programming from independent producers is in some way better or more worthy is presumptuous and unfounded, and would require the Commission to make content-related judgments that it has long sought to leave within the programming discretion of its licensees.

Also, it appears that those proposing some form of Independent Producer Rule have not fully thought out the implications that broad application of such a rule would have. For example, Univision's Spanish-language networks have traditionally had to rely on significant amounts of Spanish-language programming produced outside of the United States. However, since acquiring the original Univision Network, Univision has succeeded in increasing its U.S. program production to the point where approximately 50% of the Univision Network's program schedule is now produced in the United States for American Hispanic viewers. The great majority of this U.S.-produced programming is produced by Univision itself, as there are few U.S. independent producers of Spanish-language programming capable of producing such high quality programming.

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[31] CCC Comments at 6, 7, 13, and 31. CCC also cites as "just one example of the harms of anticompetitive and anti-creative concentration" the following: "only a few years ago networks sought final approval of only the two lead actors and the director of a given program. Today, casting directors, cinematographers, editors, composers and designers - all need network approval." Id. at 7.

Thus, a requirement that networks such as Univision look to unaffiliated program sources for a certain percentage of their programming would have the unintended effect of shifting program production from the United States to independent Spanish-language producers in other countries – a result that is surely not in the public interest.

While all programming networks would be harmed, economically and otherwise, by restrictions on how and where they obtain their programming, specialty networks like Univision, which must keep a close eye on their costs and content because of the smaller size of their potential audience, would be particularly harmed by an Independent Producer Rule. Forcing such networks to potentially sacrifice quality, while increasing programming costs, in order to subsidize independent producers is counterproductive to the Commission's goal of fostering such networks,[32] and is certainly not in the public interest.

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[32] The Commission has an "oft stated public interest objective of encouraging new national networks." Fox Broadcasting Company, 5 FCC Rcd 3211, 3211 (1990), citing Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation (Vol. 1, Oct. 1980); Competition and Responsibility in Network Television Broadcasting, 25 F.C.C. 2d 318, 333 (1970) (Encouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of the Commission). Promoting the establishment of new networks has been a "consistent interest of the FCC for many years" because "new networks . . . provide an increase in the amount and the diversity of prime time entertainment programming that will ultimately benefit the public . . ." and preserve outlet diversity. Evaluation of the Syndication and Financial Interest Rules, 6 FCC Rcd 3094, 3147 (1991).

Conclusion

Univision commends the Commission for undertaking this rule making, as it represents both an important and challenging task. Univision urges the Commission to not complicate that task by considering proposals – such as an Independent Producer Rule – that are clearly outside the scope of this proceeding. Similarly, no basis has been presented in this proceeding for the Commission to revisit its 2000 determination that the UHF discount continues to serve the public interest as an accurate assessment of the disparity between UHF and VHF stations. For the reasons set forth above, Univision urges the Commission to retain the UHF discount and reject efforts to require networks to purchase a fixed percentage of their programming from independent producers.

Respectfully submitted,

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